IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 202

CHARLES EDWARD SANDERS,

Petitioner,

vs.

UNITED STATES.

WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

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No. 202

CHARLES EDWARD SANDERS,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

Charles Edward Sanders, the Petitioner herein, is presently serving a fifteen year sentence for the alleged violation of the Federal Bank Robbery Act, 18 U.S.C. § 2113 (a), 18 U.S.C.A. § 2113 (a), imposed by the United States District Court for the Northern District of California, Northern Divison. Petitioner filed a Motion to Vacate Sentence in said United States District Court which was denied without hearing. Upon denial, Petitioner appealed to the United States Court of Appeals for the Ninth Circuit which affirmed the decision of the District Court.

Opinions Below

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 297 F.2d 735 and is reproduced in the Transcript of Record on pages 25 through 28. The opinion of the District Court may also be seen therein at pages 22 and 23.

Jurisdiction

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on December 14, 1961. In the Supreme Court of the United States, the Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari was filed on February 5, 1962, and was granted on June 25, 1962. The jurisdiction of this Court rests on 28 U.S.C. § 1254 (1).

Questions Presented

1. May the sentencing court refuse to entertain a second motion under § 2255 where the motion supplies factual grounds for relief when the basis for the denial of the first motion was its conclusory nature?

2. Where a second or successive motion under § 2255 states new grounds for relief and raises an issue appropriate for decision or collateral attack upon a sentence, may the sentencing court refuse to entertain the motion?

3. Do allegations in a § 2255 motion that movant was mentally incompetent, due to being under the influence of narcotic drugs, at the time he waived the right to counsel, waived indictment, entered a guilty plea and was sentenced, which allegations are uncontradicted in the record, require the sentencing court to hold a hearing on the motion?

Statute Involved

28 U.S.C. § 2255, 28 U.S.C.A. § 2255

§ 2255. FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING SENTENCE.

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

A motion for such relief may be made at any time.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. June 25, 1948, c. 646, 62 Stat. 967; May 24, 1949, c. 139, § 114, 63 Stat. 105.

Statement of the Case

On January 19, 1959, Petitioner appeared without counsel before the United States District Court for the Ninth District of California, where he was charged with taking approximately $220 on January 16, 1959, from an office of a bank in Sacramento, California (R. 1, 2). After explanation by the Court, Petitioner waived his right to counsel (R. 2), waived indictment and consented to proceed by way of information (R. 3 and 5). The information was then filed and read (R. 3, 4 and 6) and Petitioner entered a plea of guilty (R. 4).

On February 10, 1959, Petitioner was brought before the Court for sentencing (R. 7 and 8). When asked if he wished

to say anything before judgment was pronounced, Petitioner stated, "If possible, your Honor, I would like to go to Springfield or Lexington for addiction cure. I have been using narcotics off and on for quite a while" (R. 8). The Court recommended commitment to a medical facility and sentenced Petitioner to be imprisoned for a term of fifteen years (R. 8 and 9). As a result of this sentence, Petitioner is presently confined in the federal penitentiary at Alcatraz, California.

Petitioner, appearing in proper person, filed a Motion on January 4, 1960, petitioning the sentencing court to vacate and set aside his sentence (R. 10). As grounds therefor, he made the general allegation that the "indictment" (sic) was invalid, that his constitutional rights had been violated, that he was denied adequate assistance of counsel, and that he was intimidated and coerced into entering a plea without counsel and with no knowledge of the charges lodged against him (R. 10 and 11). With this Motion, Petitioner also filed a Petition for the Writ of Habeas Corpus-ad-Testificandum and an Affidavit and Motion to Proceed in Forma-Pauperis (R. 13 and 14).

The sentencing court, by Memorandum and Order of February 3, 1960, refused to grant a hearing and denied Petitioner's Motions and Petition (R. 15-17).

Slightly more than seven months later (on September 8, 1960), the Petitioner filed in proper person, in the sentencing court, a Motion to Vacate Sentence (R. 17), a Memorandum in support thereof (R. 18-20) and an Affidavit supporting the allegations made in the Motion (R. 21). This Motion alleges that Petitioner's conviction and judgment were obtained in violation of the Constitution and laws of the United States because at the time of trial and sentence he was mentally incompetent as a result of the administration of narcotic drugs. The supporting Affidavit states

specifically that Petitioner was confined in the Sacramento County Jail from on or about January 16, 1959 until February 18, 1959; that during this period he received narcotic drugs administered by medical authorities attendant at the jail because he was a known addict; that he was under the influence of a drug during the period of the "trial"; and that he did not understand the "trial proceeding" owing to mental incompetency caused by the administration of a drug. In concluding his Memorandum, Petitioner requested the Court to hold a hearing to enable him to present evidence to sustain the Motion.

The sentencing court, by Memorandum and Order filed September 15, 1960, refused to entertain Petitioner's Motion and, without hearing, ordered it dismissed (R. 22-23).

Thereafter, in a timely manner, Petitioner noted an appeal to the United States Court of Appeals for the Ninth Circuit (R. 24) and was granted permission to appeal *in forma pauperis* (R. 25). The appellate court, evidently without argument, affirmed the order of the trial court by opinion and judgment filed December 14, 1960 (R. 25-29).

Summary of Argument

1. Petitioner's previous *pro se* Motion under § 2255 was denied without hearing, for, in the words of the sentencing court, it was "replete with conclusions" and "sets forth no facts upon which such conclusions can be founded" (R. 16). In response to the sentencing court's rationale, the Petitioner, appearing in proper person, filed a second Motion, which is now here for consideration, in which he corrected his prior error by setting forth under oath the specific facts which, if proven, entitle him to relief. Under these circumstances it is an abuse of discretion for the sentencing court to refuse to entertain the Motion in question.

2. In his Motion under § 2255, the Petitioner is entitled to a hearing where he has alleged that he was under the influence of narcotic drugs and therefore, was mentally incompetent at the time he waived the right to counsel, waived indictment, entered a guilty plea and was sentenced.

3. A sentencing court may not refuse to grant a hearing on a second motion under § 2255 where new grounds for relief are alleged and the files and records of the case do not conclusively show that the prisoner is entitled to no relief.

ARGUMENT

Under the Particular Circumstances of This Case, It Is an Abuse of Discretion to Refuse to Entertain Petitioner's Motion to Vacate Sentence

The Petitioner, appearing in proper person, first filed a § 2255 motion in the sentencing court predicated on broad constitutional grounds and supported only by legal conclusions. The sentencing court denied this motion stating that:

> "Defendant's Motion, although replete with conclusions, sets forth no facts upon which conclusions can be founded. For this reason alone, this Motion may be denied without a hearing (cases cited).
>
> "This Motion sets forth nothing but unsupported charges, which are completely refuted by the files and records of this case" (R. 16).

Petitioner obviously benefited from the sentencing court's Memorandum, because approximately seven months later, again appearing in proper person, he filed a second motion

under § 2255 in which he corrected his former technical error by detailing specifically the grounds upon which he predicated his relief, and he buttressed this motion with an affidavit. This second motion and the affidavit supporting it allege that Petitioner received drugs administered by medical authorities at the jail in which he was incarcerated during the period in which he made court appearances and was sentenced, and that, due to the administration of said drugs, he was mentally incapacitated at the times when he waived the right to counsel, waived indictment, pled guilty and was sentenced.

These allegations, made upon a first motion under Sec. 2255 would unquestionably have entitled Petitioner to at least a hearing in a court within the Ninth Circuit. *Bell* v. *United States*, 269 F.2d 419 (9th Cir. 1959). Here, however, both the sentencing court and the appellate court held in essence that Petitioner's failure to include these specific grounds in his first motion justified their refusal to entertain his second motion.

This holding would be much more understandable had Petitioner been represented by counsel when presenting his first motion, or if Petitioner had been given leave to amend his first motion. Compare *Aiken* v. *United States*, 282 F.2d 215 (4th Cir. 1960). However, Petitioner's first motion was denied on purely technical grounds, and, when Petitioner corrected his technical errors in the form of a second motion, the sentencing court refused to entertain it on the grounds that Petitioner, unlearned in the law, was barred from a hearing on the merits because of his technical failure and omission on the first motion. Petitioner submits that the constitutional rights which may have been denied him cannot be preempted in this arbitrary fashion.

To contrast this arbitrary handling with other courts who have faced a similar situation, we cite the case of

Stephens v. *United States*, 246 F.2d 607 (10th Cir. 1957) where the court stated: "If the motion is denied without hearing because of insufficiency of pleading a further motion, if legally sufficient, should not be considered repetitious." See also *Plummer* v. *United States*, 260 F.2d 729 (D.C. Cir. 1958) where new grounds under a § 2255 motion were raised for the first time on appeal. The court there refused to consider the new grounds but stated that if there was any merit to them, they could be raised on a second motion which may be entertained under certain circumstances at the discretion of the sentencing court. It is true that the filing of a prior motion is a matter to be considered by the court in the exercise of its discretion, but that factor alone cannot be controlling, in these circumstances.

The Ninth Circuit, from which this case springs, has held, in dealing with a second or successive motion under § 2255, that: "It should not then be denied hearing solely upon the ground that it is 'a second or successive motion for similar relief' under § 2255." *Hassell* v. *United States*, 287 F.2d 646 (9th Cir. 1961).[1] This rule was established in *Salinger* v. *Loisel*, 265 U.S. 224 (1924), where the court said:

> ". . . each application is to be disposed of in the exercise of a sound judicial discretion guided and controlled by a consideration of whatever has a rational bearing on the propriety of the discharge sought. Among the matters which may be considered, and even given controlling weight, are (a) the existence of another remedy, such as a right in ordinary course to an appellate review in the criminal case; and (b) a prior refusal to discharge on a *like* application" (265 U.S. 231). (Emphasis supplied.)

[1] See also *Hill* v. *United States*, 256 F.2d 957 (6th Cir. 1958); *Hallowell* v. *United States*, 197 F.2d 926 (5th Cir. 1952); and *Barrett* v. *Hunter*, 180 F.2d 510 (10th Cir. 1950); cert. denied, 340 U.S. 897.

In *Salinger* the court quotes Mr. Justice Field with approval when he stated in *Ex Parte Cuddy* (C.C.), 40 Fed. 62:

> "The action of the court or justice on the second application will naturally be affected to some degree by the character of the court or officer to whom the first application was made, and the *fullness of the consideration given to it*" (265 U.S. 224 at pages 231-2). (Emphasis added.)

If the Sentencing Court Is to Entertain Petitioner's Motion, It Must Grant a Hearing at Which the Issues Here Raised Can Be Resolved

The gravamen of Petitioner's Motion is that he was mentally incapacitated, due to government-administered drugs, at the time he waived certain constitutional rights and was sentenced. *Walker* v. *Johnston*, 312 U.S. 275 (1941), a habeas corpus case, holds that a hearing must be held when issues of fact involving the deprivation of a constitutional right are concerned. *United States* v. *Hayman*, 342 U.S. 205, 217 (1952), teaches us that, as a remedy, Sec. 2255 "is intended to be as broad as habeas corpus".

Cited in the footnote below are six cases where the courts have held that allegations of mental incapacity due to being under the influence of drugs or suffering from withdrawal symptoms at some stage in the judicial process entitled the movant to a hearing in a Sec. 2255 proceeding.[2]

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[2] *Riffel* v. *United States*, 299 F.2d 802 (5th Cir. 1962); *Catalano* v. *United States*, 298 F.2d 616 (2nd Cir. 1962); *Alexander* v. *United States*, 290 F.2d 252 (5th Cir. 1961), cert. denied, 368 U.S. 891 (1961); *Coates* v. *United States*, 273 F.2d 514 (D.C. Cir. 1959), cert. denied, 366 U.S. 914 (1961); *Pledger* v. *United States*, 272 F.2d 69 (4th Cir. 1959); and *Lipscomb* v. *United States*, 209 F.2d 831 (8th Cir. 1954), cert. denied, 347 U.S. 962 (1954).

Supporting this view is *Hayes* v. *United States*, 305 F.2d 540 (8th Cir. 1962) where the court, at page 543, stated:

> "It is hardly necessary to add that certainty as to the lack of any mental effects from drugs upon a defendant in his trial and conviction is a matter of particular judicial solicitude."

Under 28 U.S.C. § 2255, the Sentencing Court Has No Discretion to Refuse to Entertain a Second or Successive Motion Filed Under That Statute Where the Moving Party Alleges New Grounds for Relief and the Files and Records in the Case Do Not Conclusively Show That No Relief Is Justified

18 U.S.C. § 2255 reads in part: "The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner." The phrase "for similar relief" has injected some confusion in this area and in conflicting opinions from the various circuits. The United States Court of Appeals for the District of Columbia Circuit, sitting *en banc*, in *Smith* v. *United States*, 270 F.2d 921 (D.C. Cir. 1959), holds that a § 2255 motion:

> "... is required to be entertained by the sentencing court when it presents ground 'not theretofore presented and determined'. This is 'new ground' which prevents the motion from being one for 'similar relief'. This is so although the ultimate relief sought may be said to be similar in the sense that the second motion, like the earlier one, seeks a new trial or vacation or correction of sentence. Such relief is not deemed similar if sought upon a dissimilar ground of collateral attack" (270 F.2d at page 925).

The rationale of the *Smith* case, *supra*, is clear and persuasive. The Supreme Court, in *Hayman, supra*, established that the remedy under § 2255 is as broad as habeas corpus and further stated that the history of § 2255 contains no purpose to limit or impinge prisoners' rights of collateral attack upon their convictions. The statute governing habeas corpus proceedings requires the courts to entertain applications for habeas corpus when there is presented "new ground not theretofore presented and determined" (28 U.S.C. § 2244).

In *Price* v. *Johnston*, 334 U.S. 266 (1948), a case involving the Great Writ, this Court limited the *Salinger* holding, and, in language which may be controlling here, stated:

> "There has thus been no proper occasion prior to the fourth proceeding for a hearing and determination by the District Court as to the allegation that the prosecution knowingly used false testimony to obtain a conviction. That fact renders inapplicable Salinger v. Loisel, 265 U.S. 224, 44 S.Ct. 519, 68 L.Ed. 989, upon which reliance was placed by the Circuit Court of Appeals. It was there held that, while habeas corpus proceedings are free from the res judicata principle, a prior refusal to discharge the prisoner is not without bearing or weight when a later habeas corpus application raising the same issues is considered. But here the three prior applications did not raise the issue now under consideration and the three prior refusals to discharge petitioner can have no bearing or weight on the disposition to be made of the new matter raised in the fourth petition" (334 U.S. at page 289).

Petitioner's second Motion states "new grounds" or "new matter" in this sense, for his first motion contained no

grounds but only conclusions, and certainly raises a new issue.

Though the case of *Heflin* v. *United States*, 358 U.S. 415 (1959) is not in point on the facts, the doctrine enunciated therein is most important to a consideration of this case. The concurring opinion, joined in by five Justices, reaffirms the principles enunciated in *Hayman, supra;* and, with respect to the language of Section 2255 which reads "A motion for such relief may be made at any time", this opinion states:

> "This latter provision simply means that, as in habeas corpus, there is no statute of limitations, no res judicata, and that the doctrine of laches is inapplicable" (358 U.S. 420).

With these guideposts, a sentencing court cannot refuse to entertain a second or successive motion under Section 2255, if new grounds for relief are alleged, unless the files and records of the case conclusively show that the prisoner is entitled to no relief. The latter provision, a limitation contained in the statute, adequately protects the courts against frivolous motions. The files and records in this case do not conclusively show Petitioner is entitled to no relief, but, on the other hand, do show in the Transcript of Sentence (R. 8) that Petitioner was a user of narcotics, a fact which lends credibility to his allegations.

Conclusion

Petitioner seeks merely a hearing on the issues raised by this Section 2255 Motion. It is submitted that Petitioner has shown, on the record as it now appears, a deprivation of constitutional rights, as to which he is entitled to his day in court. In *Coates* v. *United States, supra*, the court, in

35 In the United States District Court for the Northern District of California, Northern Division

Civil No. 8156

CHARLES EDWARD SANDERS, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDENT

Memorandum and order

September 15, 1960

[File endorsement omitted.]

Petitioner has moved this Court to set aside and vacate the sentence pronounced against him, as the result of his conviction on a plea of guilty to the charge of violation of Title 18 U.S.C. § 2113(a) (bank robbery), in the case of United States v. Sanders, Crim. No. 12310 in the records of this Court. This relief is sought under the provisions of Title 28 U.S.C. § 2255. Petitioner alleges that he was mentally incompetent and incapable of participating intelligently at the time of his plea and sentence. He alleges that the medical authorities in the Sacramento County Jail, in which institution he was held at the time of his plea and sentence, administered
36 narcotic drugs to him from time to time, because he was a known addict, and that these drugs rendered him mentally incompetent as aforesaid.

The record shows that petitioner was sentenced on February 10, 1959. At his request, the Court recommended that he be sent to a medical facility for treatment for narcotic addiction. On January 4, 1960, petitioner filed a motion under Title 28 U.S.C. § 2255, for the same relief which he now seeks. In this latter motion, petitioner made no mention of any mental incompetency caused by narcotic drugs, although the facts (as to his having been or not been drugged as now alleged) must have been known to him at the time of that motion. Petitioner offers, in his present petition, no excuse for the failure to raise the questions, which he seeks to raise now, at the time

he filed the earlier motion. This Court carefully considered and denied on its merits petitioner's earlier motion, by a memorandum and order filed in United States v. Sanders, supra, on February 3, 1960.

This Court is not required to entertain a second motion for similar relief on behalf of petitioner (Title 28 U.S.C. § 2255). As there is no reason given, or apparent to this Court,[1] why petitioner could not, and should not, have raised the issue of mental incompetency at the time of his first motion, the Court will refuse, in the exercise of its statutory discretion, to
37 entertain the present petition (See: Daniels vs. United States, 258 F. 2d 356; Bickford vs. United States, 206 F. 2d 395; Dunn vs. United States, 234 F. 2d 219; and United States vs. Brown, 207 F. 2d 310).

It is, therefore, ordered that petitioner's motion to set aside and vacate the sentence imposed upon him by this Court be, and it is, hereby dismissed.

Dated: September 14, 1960.

SHERRILL HALBERT,
United States District Judge.

38 In United States District Court, Sacramento, California

Civil No. 8156

Criminal No. 12310

SEPT. 22, 1960.

CHARLES EDWARD SANDERS

v.

UNITED STATES OF AMERICA

Motion and affidavit in forma pauperis

Filed Sept. 26, 1960

[File endorsement omitted.]

[1] The Court has reviewed the entire file in Crim. No. 12310, which includes the previous proceeding, and a transcript of the proceedings at the time petitioner entered his plea, and, aside from the conclusion reached on the legal propriety of the instant petition, is of the view that petitioner's complaints are without merit in fact.

Comes now Charles Edward Sanders and respectfully moves the Court for an order permitting him to proceed in appeal to the United States Court of Appeals for the Ninth Circuit in forma pauperis.

Charles Edward Sanders in support of his motion, the affiant states upon his oath that he is a pauperis person within the meaning of Section 1915(a) Title 28 U.S.C.

1. That he is of legal age.
2. That he is a citizen of the United States by birth.
3. That he takes this action in good faith, for he verily believes he has a meritorious cause.

CHARLES EDWARD SANDERS,
Box 1437.

39 In United States District Court, Sacramento, California

Civil No. 1856

Criminal No. 12310

SEPT. 22, 1960.

CHARLES EDWARD SANDERS

v.

UNITED STATES OF AMERICA

Notice of appeal

Name and address of appellant: Charles Edward Sanders, Box No. 1437, Alcatraz, California.

Concise statement of Judgment: 15 years on plea of guilty violation of Title 18 Sec. 2113.

Order appealed from: Denial of motion filed under Section 2255, Title 28 U.S.C.

Date of order: September 14, 1960.

Name of Judge: Honorable Sherrill Halbert.

Notice is hereby given of appeal of the above designated order to the United States Court of Appeals for the Ninth Circuit.

CHARLES EDWARD SANDERS,
Box 1437.

40 In the United States District Court for the Northern District of California, Northern Division

Civil No. 8156

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

Order granting motion for leave to proceed in forma pauperis

September 27, 1960

[File endorsement omitted.]

The plaintiff having filed herein a motion seeking permission to proceed with an appeal to the United States Court of Appeals for the Ninth Circuit; this Court having considered the same; and good cause appearing therefor:

It is hereby ordered that said plaintiff be, and he is, hereby granted permission and allowed to proceed in this case with an appeal to the United States Court of Appeals for the Ninth Circuit, without the pre-payment of any fees of this Court, or its officers.

Date: September 27, 1960.

SHERRILL HALBERT,
United States District Judge.

42 In the United States Court of Appeals for the Ninth Circuit

No. 17375

CHARLES EDWARD SANDERS, APPELLANT

v.

UNITED STATES OF AMERICA, RESPONDENT

Before: HAMLEY, HAMLIN and KOELSCH, *Circuit Judges*

Opinion, per curiam

December 14, 1961

[File endorsement omitted.]

Charles Edward Sanders appeals from a district court order denying his motion, made under 28 U.S.C.A., § 2255, to set aside and vacate a judgment of conviction and sentence on a charge of bank robbery. 18 U.S.C.A., § 2113(a). The principal point urged on appeal is that the district court erred in failing to grant appellant a hearing before acting upon his motion.

On January 19, 1959, Sanders was brought before the district court, charged with a violation of 18 U.S.C.A., §2113(a). The charge was explained to defendant and he was told that it constituted a felony for which he could be fined or imprisoned or both. A copy of the proposed information was handed to him. The court explained to defendant that he had a right to counsel and Sanders stated that he understood that he had that right but wished to waive it. It was also explained to Sanders that he could not be proceeded against except by indictment by the grand jury, unless he waived that right. Defendant stated that he understood that he had that right but waived his right to be proceeded against by indictment and consented to be proceeded against by information.

43 In response to questioning by the court, Sanders stated that he had freely and voluntarily decided to proceed in this fashion, and that no threats or promises had been made to induce him to take such action. He signed a waiver of indictment, the charge was read to him, and he stated that he understood the charge. Sanders then entered a plea of guilty.

On February 10, 1959, Sanders was brought before the court for sentencing. Upon being asked if there was anything he wished to say before sentence was pronounced, Sanders stated that, if possible, he would like to go to Springfield or Lexington for addiction cure. "I have been using narcotics off and on for quite a while," he told the court. A fifteen year sentence was then pronounced.

Sanders did not appeal from the conviction and sentence. On January 4, 1960, however, appearing propria persona, he filed a motion under § 2255 to vacate and set aside his sentence. The grounds relied upon were that the indictment was in-

valid, he was denied adequate assistance of counsel, and that he was intimidated and coerced into entering a plea without counsel and without any knowledge of the charges against him.

Holding that the motion contained nothing but unsupported charges which were completely refuted by the files and records, the district court, on February 3, 1960, denied the motion without hearing. Sanders did not appeal.

Appellant, again appearing propria persona, filed the instant § 2255 motion on September 8, 1960. The single ground advanced in support of this second § 2255 motion was that:

"* * * at the time of trial and sentence the petitioner was mentally incompetent and was unable to cooperate intelligently in his defense; that his mental incompetency was
44 the result of administration of narcotic drugs during the period petitioner was held in the Sacramento County jail pending trial in the instant case."

This ground had not been advanced in Sanders' first motion. In an affidavit filed in support of the second motion, Sanders stated that "during the period of the trial" he was under the influence of a drug, and that he did not understand trial procedure owing to his mental incompetency caused by the administration of a drug.

This second motion was denied, without hearing, on September 15, 1960. Pointing out that in his second motion Sanders had given no reason why he could not and should not, have raised the issue of mental competency at the time of his first motion, the court stated that, in the exercise of its discretion it would refuse to entertain the second motion.

Sanders appealed to this court and was permitted to proceed in forma pauperis. We appointed counsel to assist him on the appeal.

It is provided in § 2255 that the sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner. Sanders' motion of September 8, 1960, was a second motion for "similar relief," since in both this and the earlier motion, he sought to set aside and vacate the judgment and sentence.

Whether a court should entertain a second or successive motion for similar relief is, under the provision of § 2255 re-

ferred to above, a matter resting within the sound discretion of the trial judge. Daniels v. United States, 9 Cir., 258 F. 2d 356.

Where, as here, it is apparent from the record that at the time of filing the first motion the movant knew the
45 facts on which the second motion is based, yet in the second motion set forth no reason why he was previously unable to assert the new ground and did not allege that he had previously been unaware of the significance of the relevant facts, the district court, may, in its discretion, decline to entertain the second motion. Moore v. United States, D.C. Cir., 278 F. 2d 459.

Affirmed.

FREDERICK G. HAMLEY,
O. D. HAMLIN,
M. OLIVER KOELSCH,
Circuit Judges.

46 In United States Court of Appeals
for the Ninth Circuit

No. 17375

CHARLES EDWARD SANDERS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Judgment

December 14, 1961

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, NORTHERN DIVISION

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the order of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Dec. 14, 1961.

47 [Clerk's certificate to foregoing transcript omitted in printing.]

48 Supreme Court of the United States

No. 996 Misc., October Term, 1961

CHARLES EDWARD SANDERS, PETITIONER

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari

June 25, 1962

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1062 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

June 25, 1962

Mr. Justice Frankfurter took no part in the consideration or decision of this motion and petition.

U.S. GOVERNMENT PRINTING OFFICE 1962